Traffic Safety

California Laws Affecting the Physician and His Patient

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BECAUSE OF THE MANY legal ramifications involved in the present day practice of medicine, it may be helpful to call attention to statutory responsibilities in certain fields where knowledge of the actual laws by the average physician is less than complete. This presentation is concerned with the medicolegal relationships of the physician, the patient and the state as they pertain to the medical aspects of traffic safety.

Relatively few people who wish to drive have medical problems of a nature to make them a hazard on the road; yet the evaluation of the known problems and efforts to detect the unknown constitute a major task on the part of the Department of Motor Vehicles, and indirectly on the part of the medical profession. Without the backing and assistance of physicians, the campaign to protect the public from medically unsafe drivers would be a total failure.

General Consideration Of Driving Licensure

There are specific grounds upon which the Department of Motor Vehicles is required to refuse to issue or to renew a driver's license (Section 12805 of the California Vehicle Code). They are:

- Alcoholism, narcotic addiction or the habitual use of any drug rendering the person incapable of safely operating a motor vehicle;
- Mental illness, idiocy, imbecility and feeblemindedness;
- Epilepsy;
- Other physical or mental defects which would affect driving ability.

An applicant must disclose the existence of any of these grounds when obtaining or renewing his license (V.C. 12800). If he fraudulently conceals this information, his license can be refused (V.C. 12809) or revoked (V.C. 13359). If any of these grounds develop while he has his license, it can be revoked (V.C. 13359). Actually, the Department has the power to immediately revoke a license without a previous medical examination when, on the basis of the driver's mental or physical condition, he would constitute a hazard to public safety (V.C. 13953).

Since most of these grounds involve medical matters, the Department of Motor Vehicles is empowered to order medical evaluations as a part of a driver's examination for licensure (V.C. 12804). Indeed, the Department can order medical examinations even after the license has been granted, to determine if it should be revoked or suspended

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(V.C. 13800). If the applicant fails to submit to an examination or re-examination, his license can be refused (V.C. 12809) or suspended (V.C. 13801) until he complies with the order.

Duty of the Physician to Report Cases of Epilepsy

There are several sections in the California codes which require physicians to report cases of epilepsy and related conditions to the Public Health Offices. Ad. Code, Titles 17, section 2572 states: "Any condition which brings about momentary lapses of consciousness and which may become chronic shall be considered reportable under the term *epilepsy*." (The reporting requirements under H&S code, section 410, apply not only to epilepsy but also to "similar disorders characterized by lapses of consciousness." Therefore, physicians must report cases of epilepsy *and* other conditions associated with lapses of consciousness though not actually epileptic in nature.

While V.C. 12805 states that persons with epilepsy shall not be licensed to drive, V.C. 12806 provides that if a physicial or mental defect does not, in the opinion of the Department of Motor Vehicles, affect the driving ability, a license may be issued. On this basis, it has been the practice of the Department of Motor Vehicles to evaluate each case on its merits and, if possible, to provide the applicant with at least a restricted license befitting his circumstances. When licenses have been revoked on the basis of lapses of consciousness, reinstatement is often provided on a probationary basis when control has become adequate. When this is accomplished, the licensee must furnish periodic reports from his physician to the Department.

Duty of the Physician Concerning Physical and Mental Disabilities Which May Affect Driving Competency

Unlike the situation of epilepsy (including its broad definition noted above), there is no statutory requirement that a physician initiate a report of any other mental or physical defect even though it may significantly affect driving ability. Despite the desirability of doing so under some circumstances, based on public safety, an unconsented disclosure by a physician could well result in a breach of confidence for which he could be subject to civil liability to the patient.

As was noted above, however, the Department of Motor Vehicles has the power to investigate medical matters at just about any time. When a physician is asked by the Department (with the consent of the patient) or by the patient to provide medical information to the Department, it is the duty of the physician to make full disclosure of the patient's medical background as it pertains to his driving ability. A failure to make such complete disclosure when asked may result in civil responsibility on the part of the physician to the patient if injury occurs as a proximate result thereof.

It has been the practice of the Department of Motor Vehicles to supply the examining physician with as much of the medical background as the Department has already obtained in order that the examining physician may render a complete opinion. If the physician, acting as an examiner, is not satisfied with the background information available, he can request further information from the Department.

What constitutes a mental or physical defect which may affect driving ability depends on the circumstances of each individual case. The examining or treating physician must use his own discretion and medical judgment. In his report to the Department of Motor Vehicles, the physician should render, if possible, not only the opinion of the diagnosis, but also an opinion as to the applicant's driving ability as it might be affected by whatever disease or condition he may have.

The opinion of the examining or treating physician is not final. The Vehicle Code provides that the Department of Motor Vehicles make the final decision, although it may be predicated greatly upon the findings and opinions supplied by the physicians (V.C. 14105, V.C. 14110). Therefore, the disclosure by the physician of the medical information at his disposal does not necessarily mean that the patient will be deprived completely of a license. The Department of Motor Vehicles has the power under certain circumstances to issue just about any form of restricted license to fit the needs (V.C. 12813). Finally, V.C. 12806 provides the Department with authority to issue a regular, unrestricted and unconditional license in many cases where the health problem or physical or mental defect does not, in the particular individual, affect his ability to exercise reasonable and ordinary control in operating a motor vehicle.

The reports of examining and treating physicians to the Department of Motor Vehicles are confidential (V.C. 1808). It should be emphasized that the patient, not the Department of Motor Vehicles, is responsible for all medical charges and special expenses involved in establishing driving eligibility.

Although there may be no duty upon the physician to initiate a report to the Department of Motor Vehicles for conditions affecting driving safety other than epilepsy, the physician does have a duty to warn the patient that whatever condition he might have may well affect his driving ability. Failure to warn the patient may result in civil responsibility to the patient or to a third person who may be injured as a proximate result thereof.

Duty of the Physician Concerning The Use of Drugs

Again, there is no duty on the part of a physician to initiate a report to the Department of Motor Vehicles or to the Department of Public Health concerning a patient's use of drugs (other than in the treatment of narcotic addiction). However, a driver who may use drugs or who may be ordered to use drugs by the physician, which may affect driving ability, may find himself in trouble:

- V.C. 23102 states: "It is unlawful for any person who is under the influence of intoxicating liquor, or under the combined influence of intoxicating liquor and any drug, to drive a vehicle upon any highway. A conviction under this section will result in revocation of the driver's license (V.C. 13550).
- V.C. 23105 states: "It is unlawful for any person who is addicted to the use, or under the influence, of narcotic drugs or amphetamine or any derivative thereof, to drive a vehicle upon any highway." A violation of this rule constitutes a felony. A conviction under this code section will result in revocation of the driver's license (V.C. 13350).
- V.C. 23106 states: "It is unlawful for any person under the influence of any drug, other than a narcotic or amphetamine or any derivative thereof, to a degree which renders him incapable of safely driving a vehicle, to drive a vehicle upon the highway." A violation of this rule constitutes a misdemeanor. Conviction under this rule can result in revocation of the driver's license if there is evidence of habitual use (V.C. 12805).
- V.C. 23107 states: "The fact that any person charged with a violation of Section 23105 or 23106 is or has been entitled to use such drugs or amphetamine or any derivative thereof under the laws of this state shall not constitute a defense against any violation of the Sections." This means that even though the patient may be using a drug at the prescription of a physician, and this drug affects the patient's driving ability, he has no defense.
- As an extension of V.C. 23106 (above), V.C. 23108 states that if any injury occurs while a patient is driving under the influence of a drug which renders him incapable of driving a vehicle safely, the patient may be convicted of a felony. It is interesting to note that this rule also states that a driver shall be presumed to have knowledge that he was under the influence of such a drug if it in fact rendered him incapable of safely driving a vehicle (although this may be rebutted with appropriate evidence). This section is actually limited to the drugs contained within Section 4211 of the Business and Professions Code. This section sets forth a series of 12 classifications of drugs which includes, but is not limited to, any drugs which bear a legend: "Caution: Federal Law Prohibits Dispensing without Prescription."

While the previously mentioned sections of the California Codes involve the personal responsibility of the patient, the physician may incur secondary responsibility to the patient in the form of civil liability for the failure to warn the patient that a particular prescribed drug may affect his driving ability.

Reporting of Injuries

Whenever an injury occurs as a result of a traffic accident, the driver of the automobile is required to make a report to the Department of Motor Vehicles (V.C. 20008). If he is unable to make such a report because of his physical disability, any occupant of the automobile who is able must make a report (V.C. 20010).

There is no apparent duty required by California law for a physician to report injuries occurring in a traffic accident. It should be pointed out, however, that Sections 11160, 11161 and 11162 of the Penal Code require the physician and/or the hospital to report to law enforcement agencies the occurrences of injuries received in a criminal manner. These sections do not exclude traffic injuries; but it has been the practice of the California Highway Patrol not to demand reports of traffic injuries unless the physician is aware that the automobile was used as a purposeful homicidal weapon. It should also be pointed out that local communities may have individual ordinances which may require the reporting of traffic injuries. Cases ending in death, of course, should always be reported.

The Physician's Responsibility in the Emergency Treatment of Traffic Injuries

Section 2144 of the Business and Professions Code provides that no licensed physician "who in good faith renders emergency care at the scene of the emergency, shall be liable for any civil damages as the result of any acts or omissions by such person in rendering the emergency care." This is the "good Samaritan statute," but it is applicable only to treatment rendered at the scene of the emergency. It does not apply to treatment rendered in emergency rooms, in doctors' offices, or in hospitals, unless such an emergency arose in such a location and the occurrence of the emergency was not caused by the treating physician or hospital.

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